

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

ELISKIM, INC.;

and the CITY OF GENEVA, OHIO

Defendants.

CIVIL ACTION NO.

COMPLAINT

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency, files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks to recover unreimbursed costs from Eliskim, Inc. ("Eliskim") and the City of Geneva, Ohio ("City") (collectively "Defendants") incurred for response activities undertaken in response to the release and threatened release of hazardous substances from a facility located in the City of Geneva, Astabula County, Ohio, known as the True Temper Sports Superfund Site (the "Site"). The United States also seeks a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that the Defendants are liable for any further

response costs that the United States may incur as a result of releases or threatened releases of hazardous substances from the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the parties hereto, pursuant to Sections 106(a), 113(b), and 113(e) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 9613(e), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section and 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

THE DEFENDANTS

4. Each Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. The Defendants are owners and/or operators of the Site, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and/or were owners and/or operators of portions of the Site when hazardous substances were disposed of at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

6. In 1997, EPA and the Defendants entered into an "Administrative Order by Consent" ("AOC") pursuant to Sections 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9606(a), 9607, and 9622. In the AOC, Defendants agreed, among other things, to pay EPA's "oversight costs," meaning the response costs EPA paid or incurred in connection with the Site after September 30, 1996. However, the Defendants have failed to pay approximately \$118,000 in EPA's oversight costs under the AOC.

FIRST CLAIM FOR RELIEF – CERCLA SECTION 107(a)

7. The Site is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).
8. At times relevant to this action, there have been “releases” and “threatened releases” of “hazardous substances” into the environment from the Site, within the meaning of CERCLA Sections 101(14), 101(22), and 107(a), 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a).
9. The United States has incurred “response costs,” within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), in responding to releases and threatened releases of hazardous substances at and from the Site, including without limitation, oversight costs under the AOC.
10. The response costs were incurred by the United States in a manner not inconsistent with the National Contingency Plan, which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.
11. The Defendants are within the class of liable persons described in CERCLA Section 107(a)(1) and/or 107(a)(2), 42 U.S.C. § 9607(a)(1) and/or 9607(a)(2), because they are owners and/or operators of portions of the Site, and/or because they were owners and/or operators of portions of the Site when hazardous substances were disposed of there.
12. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), the Defendants are jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against the Defendants, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;
2. Enter a declaratory judgment in favor of the United States and against the above-named Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that those Defendants are jointly and severally liable for future response costs incurred by the United States;
3. Award the United States its costs of this action; and
4. Grant such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint were served on this date by first-class mail, postage prepaid, upon the following persons:

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